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DOUBLE TAXATION

Taxes on Income

Agreement, With Related
Notes, Between the
UNITED STATES OF AMERICA
and MALTA

Signed at Valletta March 21, 1980

S 9.10:

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89-497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

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MALTA

Double Taxation: Taxes on Income

Agreement, with related notes, signed at Valletta March 21, 1980;
Transmitted by the President of the United States of America to the Senate April 21, 1980 (S. Ex. E, 96th Cong., 2d Sess.);
Reported favorably by the Senate Committee on Foreign Relations November 10, 1981 (S. Ex. Rept. No. 97-30, 97th Cong., 1st Sess.);
Advice and consent to ratification by the Senate, with an amendment and an understanding, November 18, 1981;
Ratified by the President, subject to said amendment and understanding, December 3, 1981;
Ratified by Malta May 18, 1982;
Ratifications exchanged at Valletta May 18, 1982;
Proclaimed by the President April 18, 1983;
Entered into force May 18, 1982.

READEX FICHE

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Agreement between the United States of America and the Republic of Malta with Respect to Taxes on Income, together with a related exchange of notes, was signed at Valletta on March 21, 1980, the texts of which are hereto annexed;

The Senate of the United States of America by its resolution of November 18, 1981, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Agreement, subject to the following:

(1) amendment to paragraph 5(c) of Article 10 of the Treaty, so as to read as follows:

"(c) the dividends are paid out of profits attributable to one or more permanent establishments of such company in that State, provided that the gross income of the company attributable to such permanent establishment constituted at least 50 percent of the company's gross income from all sources."

(2) understanding that appropriate Congressional committees and the General Accounting Office shall be afforded access to the information exchanged under this Treaty where such access is necessary to carry out their oversight responsibilities, subject only to the limitations and procedures of the Internal Revenue Code.

The Agreement, together with a related exchange of notes, was ratified, subject to the aforesaid amendment and understanding, by the President of the United States of America on December 3, 1981, in pursuance of the advice and consent of the Senate, and was ratified on the part of the Republic of Malta;

The instruments of ratification of the Agreement and related exchange of notes were exchanged at Valletta on May 18, 1982, and accordingly the Agreement entered into force on May 18, 1982, effective as specified in Article 29 of the Agreement;

NOW, THEREFORE, I, Ronald Reagan, President of the United States of America, proclaim and make public the Agreement and related exchange of notes to the end that they be observed and fulfilled with good faith on and after May 18, 1982, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this eighteenth day of April in the year of our Lord one thousand nine hundred eighty-three and of the Independence of the United States of America the two hundred seventh.

[SEAL]

RONALD REAGAN

By the President:

KENNETH W. DAM

Acting Secretary of State

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF MALTA WITH RESPECT TO TAXES ON INCOME

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

and

THE GOVERNMENT OF THE REPUBLIC OF MALTA

DESIRING to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

HAVE AGREED AS FOLLOWS:

Article 1

Personal Scope

(1) Except as otherwise provided in this Agreement, this Agreement shall apply to persons who are residents of one or both of the Contracting States.

(2) This Agreement shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

(a) by the laws of either Contracting State, or

(b) by any other agreement between the Contracting States.

(3) Notwithstanding any provision of this Agreement, except paragraph (4) of this Article, a Contracting State may tax its residents (as determined under Article 4 (Fiscal Residence)), and by reason of citizenship may tax its citizens, as if this Agreement had not come into effect.

(4) The provisions of paragraph (3) shall not affect:

(a) the benefits conferred by a Contracting State under Articles 24 (Relief From Double Taxation), 25 (Non-Discrimination), and 26 (Mutual Agreement Procedure); and

(b) the benefits conferred by a Contracting State under Articles 20 (Government Service), 21 (Teachers), 22 (Students and Trainees) and 28 (Diplomatic Agents and Consular Officers) upon individuals who are neither citizens of, nor have immigrant status in, that State.

Article 2

Taxes Covered

(1) This Agreement shall apply to taxes on income imposed on behalf of a Contracting State.

(2) The existing taxes to which this Agreement shall apply are:

(a) in the United States: the Federal income taxes imposed by the Internal Revenue Code [1] and the excise tax imposed on insurance premiums paid to foreign insurers and the excise taxes with respect to private foundations;

(b) in Malta: the income tax, including prepayments of tax whether made by deduction at source or otherwise.

(3) This Agreement shall apply also to any identical or substantially similar taxes which are imposed by a Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws and shall notify each other of any official published material concerning the application of this Agreement, including explanations, regulations, rulings, or judicial decisions.

(4) The United States may impose its personal holding company tax and its accumulated earnings tax notwithstanding any provision of this Agreement. However, a company resident in Malta shall be exempt from the United States personal holding company tax in any taxable year unless 10 per cent or more in value of its stock is owned directly or indirectly,

[1] 68A Stat. 3; 26 U.S.C. §§ 1-8023.

within the meaning of section 544 of the Internal Revenue Code, by one or more individuals who are residents or citizens of the United States. A company resident in Malta shall be exempt from the United States accumulated earnings tax in any taxable year unless at least 25 per cent of the voting stock of such company is owned by citizens or residents of the United States.

(5) For the purpose of Article 25 (Non-Discrimination), this Agreement shall also apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

Article 3

General Definitions

(1) For the purpose of this Agreement, unless the context otherwise requires:

(a) the term "person" includes an individual, a partnership, a company, an estate, a trust, and any other body of persons;

(b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(c) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(d) the term "international traffic" means any transport by a ship or aircraft, except where such transport is solely between places in the other Contracting State;

(e) the term "national" means:

(i) in respect of the United States, all individuals possessing the citizenship of the United States of America and all legal persons, partnerships and associations deriving their status as such from the laws in force in the United States;

(ii) in respect of Malta, any citizen of Malta as provided for in Chapter III of the Constitution of Malta and in the Maltese Citizenship Act, 1965, and any legal person, partnership or association deriving its status as such from the law in force in Malta;

(f) the term "competent authority" means:

(i) in the United States: the Secretary of the Treasury or his delegate; and

(ii) in Malta: the Minister responsible for finance or his authorised representative;

(g) (i) the term "United States" means the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory; and

(ii) when used in a geographical sense, such term also includes (a) the territorial sea thereof, to the extent recognized by international law, and (b) the seabed and subsoil of the submarine areas adjacent to the coast thereof, but beyond the territorial sea, over which the United States exercises sovereign rights, in accordance with international law, with respect to the exploration for, and exploitation of, the natural resources of such areas, but only to the extent that the person, property or activity to which this Agreement is being applied is connected with such exploration or exploitation;

(h) (i) the term "Malta" means the Republic of Malta; and

(ii) when used in a geographical sense, the term "Malta" means the Maltese islands, and includes (a) the territorial sea thereof, to the extent recognized by international law, and (b) the seabed and subsoil of the submarine areas adjacent to the coast thereof, but beyond the territorial sea, over which Malta

exercises sovereign rights, in accordance with international law, with respect to the exploration for, and exploitation of, the natural resources of such areas, but only to the extent that the person, property or activity to which this Agreement is being applied is connected with such exploration or exploitation;

(i) the terms "a Contracting State" and "the other Contracting State" mean the United States or Malta as the context requires.

(2) As regards the application of this Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires and subject to the provisions of Article 26 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which this Agreement applies.

Article 4

Fiscal Residence

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, but:

(a) this term does not include any person who is liable to tax in that State in respect only of income from sources in that State; and

(b) in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax as the income of a resident of that State, either in its hands or in the hands of its partners or beneficiaries.

(2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States, then his or her status shall be determined as follows:

(a) the individual shall be deemed to be a resident of the State in which he or she has a permanent home available; if such individual has a permanent home available in both States, or in neither State, he or she shall be deemed to be a resident of the State with which his or her personal and economic relations are closer (centre of vital interests);

(b) if the State in which the individual's centre of vital interests cannot be determined, he or she shall be deemed to be a resident of the State in which he or she has an habitual abode;

(c) if the individual has an habitual abode in both States or in neither of them, he or she shall be deemed to be a resident of the State of which he or she is a national;

(d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) a company is a resident of both Contracting States, then if it is created or organized under the laws of a Contracting State or a political subdivision thereof, it shall be treated as a resident of that State.

(4) Where by reason of the provisions of paragraph (1) a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States, shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Agreement to such person.

(5) For the purposes of this Agreement, an individual who is a national of a Contracting State shall also be deemed to be a resident of that State if (a) the individual is an employee of that State or an instrumentality thereof in the other Contracting State or in a third State; and (b) the individual is engaged in the performance of governmental functions for the first-mentioned State; and (c) the individual is subjected in the first-mentioned

State to the same obligations in respect of taxes on income as are residents of the first-mentioned State. The spouse and minor children residing with the employee and subject to the requirements of (c) above shall also be deemed to be residents of th first-mentioned State.

(6) Where under any provision of this Agreement income arising in one of the Contracting States is relieved from tax in that Contracting State and, under the law in force in the other Contracting State a person in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned Contracting State shall apply only to so much of the income as is remitted to or received in the other Contracting State during the year such income accrues or the following year.

Article 5

Permanent Establishment

(1) For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term "permanent establishment" shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

(f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

(3) A building site or construction or installation project, or an installation or drilling rig or ship used for the exploration or development of natural resources, or supervisory activities connected therewith, constitutes a permanent establishment but only if such site, project or activity continues for a period or periods aggregating more than 183 days in any twelve month period (including the period of any supervisory activity connected therewith), provided that a permanent establishment shall not exist in any taxable year in which such site, project or activity continues for a period or periods aggregating less than 30 days in that taxable year.

(4) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

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(a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for scientific research or for carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs (a) to (e) of this paragraph.

(5) Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from Immovable Property (Real Property)

(1) Income derived by a resident of a Contracting State from immovable (real) property situated in the other Contracting State may be taxed in that other State.

(2) The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) shall apply to income derived from the direct use, letting,or use in any other form of immovable property.

(4) The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

Business Profits

(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

(2) Subject to the provisions of paragraph (3), where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.

(3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(5) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(6) The provisions of this Article shall not affect the provisions of the law of a Contracting State regarding the taxation of the business of insurance.

(7) Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

(8) The term "profits" as used in this Article means income derived from any trade or business whether carried on by an individual, company or any other person, or group of persons, including the rental of tangible personal (movable) property.

Article 8

Shipping and Air Transport

(1) Profits of an enterprise of a Contracting State from the operation in international traffic of ships or aircraft shall be taxable only in that State.

(2) For purposes of this Article, profits from the operation in international traffic of ships or aircraft include profits derived from the rental on a full or bareboat basis of ships or aircraft if operated in international traffic by the lessee or if such rental profits are incidental to other profits described in paragraph (1).

(3) Profits of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise shall be taxable only in that State.

(4) The provisions of paragraphs (1) and (3) shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

(5) Notwithstanding the other provisions of this Article, profits from the operation of a ship in international traffic and gains from the sale, exchange or other alienation of such a ship, derived by a corporation resident in Malta which has more than 25 per cent of its voting stock owned, directly or indirectly, by persons not resident in Malta, may be taxed by the United States unless the corporation proves that the profits derived from the operation of such ship are subject to Malta tax without regard to any relief therefrom as provided for in section 86 of the Merchant Shipping Act, 1973, or in any identical or similar provision. [1]

[1] See exchange of notes, p. 54.

Article 9

Associated Enterprises

(1) Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

(2) Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

(3) The provisions of paragraph (1) shall not limit any provisions of the law of either Contracting State which permit the distribution, apportionment or allocation of income, deductions, credits, or allowances between persons owned or controlled directly or indirectly by the same interests when necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such persons.

Article 10

Dividends

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) in the case of United States:

(i) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which owns, directly or indirectly, at least 10 per cent of the voting stock of the company paying the dividends;

(ii) 15 per cent of the gross amount of the dividends in all other cases;

(b) in the case of Malta:

that chargeable on the company paying the dividends in the year during which distribution is made.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(3) The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to

the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

(4) The provisions of paragraphs (1) and (2) shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), asthe case may be, shall apply.

(5) Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as

(a) such dividends are paid to a resident of that other State;

(b) the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, or

(c) such dividends are paid out of profits attributable to one or more permanent establishments which such company had in that other State, provided that such profits constituted at least 50 per cent of such company's gross income from all sources.[1]

Where subparagraph (c) applies and subparagraphs (a) and (b) do not apply, any such tax shall be subject to the limitations of paragraph (2).

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[1] For an amendment to para. 5(c) of art. 10, see p. 2.

Article 11

Interest

(1) Interest arising in a Contracting State which is derived and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

(2) However, such interest may be taxed in the Contracting State in which it arises and according to the law of that State, but the tax so charged shall not exceed 12½ per cent of the gross amount of such interest. [1]

(3) Notwithstanding paragraphs (1) and (2), interest beneficially derived by one of the Contracting States, or by an instrumentality of that Contracting State not subject to tax by that Contracting State on its income shall be exempt from tax by the other Contracting State.

(4) The term "interest" as used in this Agreement means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures,including premiums or prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(5) The provisions of paragraph (2) shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which

[1] See exchange of notes, pp. 54-55.

the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(7) Where, by reasons of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

(8) A Contracting State may not impose any tax on interest paid by a resident of the other Contractin State, except insofar as

(a) such interest arises in, or is paid to a reside of, the first-mentioned State, or

(b) the debt claim in respect of which the interest is paid is effectively connected with a permane establishment or a fixed base situated in the first-mentioned State.

Article 12

Royalties

(1) Cultural royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

(2) Industrial royalties arising in a Contracting State which are derived and beneficially owned by a resident of the other Contracting State:

(a) may be taxed by both Contracting States, but

(b) shall not be taxed in the Contracting State in which they arise at a rate in excess of 12½ per cent of the gross amount of such royalties. [1]

(3) For the purposes of this Article:

(a) cultural royalties are payments of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works;

(b) industrial royalties are payments of any kind made as consideration for:

(i) the use of, or the right to use cinematographic films or tapes for television or broadcasting, patents, designs, models, plans, secret processes or formulae, trademarks, or other like property or rights; and

(ii) the supply of scientific, technical, industrial or commercial knowledge or information (know-how) held by the person supplying such know-how including the supply of any assistance of an ancillary

[1] See exchange of notes, pp. 54-55.

and subsidiary nature supplied as a means of enabling the application or enjoyment of such know-how or any other property or right to which this article applies; and

(c) cultural royalties and industrial royalties include gains derived from the sale, exchange, or other alienation of any such property or rights to the extent that the amounts realized on such sale, exchange, or other alienation for consideration are contingent on the productivity, use, or alienation of such property or rights.

(4) The provisions of paragraphs (1) and (2)(b) shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. However, where the property or rights for which the royalties are paid are used within the United States or Malta, as the case may be, the royalties shall be deemed to arise in the State in which the property or rights are used.

(6) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the person deriving the royalties in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

Capital Gains

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 (Income From Immovable Property (Real Property)) and situated in the other Contracting State as well as gains from the alienation of shares of a company the assets of which consist, directly or indirectly, principally of such immovable property may be taxed in that other State.

(2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

(3) Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft or containers operated by such enterprise in international traffic shall be taxable only in that State, and gains described in Article 12 (Royalties) shall be taxable only in accordance with the provisions of Article 12.

(4) Gains from the alienation of any property other than that referred to in paragraphs (1), (2), and (3), shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Independent Personal Services

(1) Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall be taxable only in that State unless such services are performed in the other Contracting State and

(a) the individual is present in that other State for a period or periods aggregating more than 90 days in the taxable year concerned, or

(b) the individual has a fixed base regularly available to him in that other State for the purpose of performing his activities, but only so much of the income as is attributable to that fixed base may be taxed in such other State, or

(c) the remuneration for his services in the other Contracting State is derived from residents of that State and exceeds ten thousand United States dollars or the equivalent during the taxable year.

(2) The term "personal services" referred to in this Article includes, especially, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent Personal Services

(1) Subject to the provisions of Articles 17 (Directors' Fees), 19 (Pensions and Annuities) and 20 (Government Service), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1), remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned, and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment as a member of the regular complement of a ship or aircraft operated by an enterprise of a Contracting State in international traffic may be taxed in that Contracting State.

Article 16

Investment or Holding Companies

If 25 per cent or more of the capital of a company which is a resident of a Contracting State is owned directly or indirectly by individuals who are not residents of that State, and if by reason of special measures the tax imposed by that State on that company with respect to dividends, interest or royalties arising in the other Contracting State is substantially less than the tax generally imposed by the first-mentioned State on company business profits, then, notwithstanding the provisions of Articles 10 (Dividends), 11 (Interest), or 12 (Royalties), that other State may tax such dividends, interest or royalties. For the purposes of this Article, the source of dividends, interest or royalties shall be determined in accordance with subparagraphs (a), (b) or (c) of paragraph 3 of Article 24 (Relief from Double Taxation).

Article 17

Directors' Fees

Notwithstanding Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), directors' fees derived by a resident of one of the Contracting States in his capacity as a member of the board of directors of a company of the other Contracting State (but not including fixed or contingent payments derived in his capacity as an officer or employee) may, to the extent such fees are in excess of a reasonable fixed amount payable to all directors of the company for attendance at a directors' meeting in such other Contracting State, be taxable in such other Contracting State, whether or not such director is physically present in such other Contracting State in connection with his duties as a director.

Article 18

Artistes and Athletes

(1) Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his or her personal activities as such exercised in the other Contracting State, may be taxed in that other State if:-

(a) the artiste or athlete is present in that other Contracting State for a period or periods aggregating 90 days or more during the taxable year, or

(b) such income exceeds 500 United States dollars or the equivalent for each day of performance, including rehearsal, or five thousand United States dollars or the equivalent, in the taxable year.

(2) Where income in respect of activities exercised by an entertainer or an athlete in his or her capacity as such accrues not to that entertainer or athlete but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services), and 15 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised. For the purposes of the preceding sentence, income of an entertainer or athlete shall be deemed not to accrue to another person if it is established that neither the entertainer or athlete, nor persons related thereto, participate directly or indirectly in the

profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

Article 19

Pensions and Annuities

(1) Subject to the provisions of paragraph 2 of Article 20 (Government Service), pensions and other similar remuneration beneficially derived by a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

(2) Annuities beneficially derived by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

Article 20

Government Service

(1) (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services;

provided that the provisions of clause (ii) shall not apply to the spouse or dependent children of an individual who is receiving remuneration to which the provisions of subparagraph (a) apply and who does not come within the terms of clause (i) or (ii).

(2) (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that State.

(3) The provisions of Articles 14 (Independent Personal Services), 15 (Dependent Personal Services), 18 (Artistes and Athletes), and 19 (Pensions and Annuities), shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 21

Teachers

(1) Remuneration which a professor or teacher who is, or immediately before was, a resident of a Contracting State and who visits the other Contracting State for a period not exceeding two years for the purpose of carrying out advanced study or research or for teaching at a University, college, school or other educational institution receives for such work shall not be taxed in that other State, provided that such remuneration is paid to him from sources outside that other State.

(2) This article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 22

Students And Trainees

(1) Payments which a student, apprentice or business trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State for the purpose of his or her full-time education or training receives for the purpose of his or her maintenance, education or training shall not be taxed in that State provided that such payments arise from sources outside that State.

(2) An individual to whom paragraph (1) applies may elect to be treated for tax purposes as a resident of the first-mentioned State. The election shall apply to all periods during the taxable year of the election and subsequent taxable years during which the individual qualifies under paragraph (1), and may not be revoked except with the consent of the competent authority of that State.

Article 23

Other Income

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

(2) The provisions of paragraph (1) shall not apply to income other than income from immovable property as defined in paragraph (2) of Article 6 (Income From Immovable Property (Real Property)), if the person deriving the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits), Article 14 (Independent Personal Services), or Article 18 (Artistes and Athletes) as the case may be, shall apply.

Article 24

Relief From Double Taxation

(1) In the case of the United States, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income or capital the appropriate amount of tax paid to Malta; and, in the case of a United States company owning at least 10 per cent of the voting stock of a company which is a resident of Malta from which it receives dividends in any taxable year, the United States shall allow as a credit against the United States tax on income the appropriate amount of tax paid to Malta by that company with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid to Malta, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources outside of the United States) provided by United States law for the taxable year. For purposes of applying the United States credit in relation to tax paid to Malta the taxes referred to in paragraphs (2)(b) and (3) of Article 2 (Taxes Covered) shall be considered to be income taxes.

(2) In the case of Malta, double taxation shall be avoided as follows:

Subject to the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax, where, in accordance with the

provisions of this Agreement, there is included in a Malta assessment income from sources within United States, the United States tax on such income shall be allowed as a credit against the Malta tax payable thereon. Where a company which is a resident of the United States pays a dividend to a company resident in Malta owning at least 10 per cent of the voting stock in the United States company, the credit shall, in addition, take into account the United States tax payable by the United States company in respect of the profits out of which the divident is paid.

(3) For the purposes of the preceding paragraphs of this Article, the source of income or profits shall be determined in accordance with the following rules:

(a) Dividends, as defined in paragraph (3) of Article 10 (Dividends), shall be deemed to arise in a Contracting State if paid by a company which is a resident of that State or if paragraph (5)(c) of Article 10 applies.

(b) Interest, as defined in paragraph (4) of Article 11 (Interest), shall be deemed to arise in the State specified in paragraph (6) of Article 11.

(c) Royalties, as defined in paragraph (3) of Article 12 (Royalties), shall be deemed to arise in the State specified in paragraph (5) of Article 12.

(d) Except for income or profits referred to in sub-paragraphs (a), (b) or (c), and except for income or profits taxed by the United States solely by reason of citizenship in accordance with paragraph (3) of Article 1 (Personal Scope): income or profits derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise in that other Contracting State.

Article 25

Non-Discrimination

(1) Nationals of a Contracting State shall not be subjected in the other State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. For purposes of the preceding sentence, nationals who are subject to tax by a Contracting State on worldwide income are not in the same circumstances as nationals who are not so subject. This provision shall, notwithstanding the provisions of Article 1 (Personal Scope), also apply to persons who are not residents of one or both of the Contracting States.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

(3) Except where the provisions of paragraph (1) of Article 9 (Associated Enterprises), paragraph (5) of Article 11 (Interest), or paragraph (4) of Article 12 (Royalties) apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other

Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same condition as if they had been paid to a resident of the first-mentioned State.

Similarly, any debts of an enterprise of a Contracting State, to a resident of the other Contracting State, shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

(4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

(5) The provisions of this Article shall apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

Article 26

Mutual Agreement Procedure

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him or her in taxation not in accordance with the provisions of this Agreement, he or she may, irrespective of the remedies provided by the domestic law of those States, present his or her case to the competent authority of the Contracting State of which he or she is a resident or national.

(2) The competent authority shall endeavour if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. In particular the competent authorities of the Contracting States may agree:

(a) to the same attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;

(b) to the same allocation of income, deductions, credits, or allowances between persons, including a uniform position on the application of the requirements of paragraph (2)

of Article 25 (Non-discrimination);

(c) to the same characterization of particular items of income;

(d) to the same application of source rules with respect to particular items of income;

(e) to a common meaning of a term; and

(f) to increases in any dollar amounts referred to in the Agreement to reflect monetary or economic developments.

They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

(5) The competent authorities of the Contracting States may prescribe regulations to carry out the purposes of this Agreement.

Article 27

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

(2) If specially requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of authenticated copies of unedited original documents (including books, paper, statements, records, accounts, or writings), to the same extent such documents can be obtained under the laws and administrative practices of such other State with respect to its own taxes.

(3) In no case shall the provisions of paragraph (1) construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainabl under the laws or in the normal course of th administration of that or of the other Contracting State;

(c) to supply information which would disclose a trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would b contrary to public policy (ordre public).

Article 28

Diplomatic Agents and Consular Officers

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Article 29

Entry Into Force

(1) This Agreement shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Valletta as soon as possible.

(2) The Agreement shall enter into force upon the exchange of instruments of ratification[1] and its provisions shall have effect in respect of income or profits arising on or after the first day of January of the year in which the Agreement enters into force.

[1] May 18, 1982.

Article 30

Termination

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement at any time after 3 years from the date on which this Agreement enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels. In such event, the Agreement shall cease to have force and effect as respects income or profits arising on or after January 1 next following the expiration of the 6-month period.

DONE at VALLETTA in duplicate, in the English language, this 1st day of March 1980.

Joan Margaret Clark [1]

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

[2]

FOR THE GOVERNMENT OF THE REPUBLIC OF MALTA:

[1] Joan Margaret Clark.
[2] R. Stivala.

[RELATED NOTES]

Valletta, Malta
March 21, 1980

Sir:

I have the honor of commenting on the Agreement between the United States of America and Malta with respect to taxes on income, signed today. The following understandings were reached between the two Governments.

(1) In the process of negotiating this Agreement, the delegation from Malta emphasized the necessity of including in the Agreement additional provisions which will create incentives to promote the flow of investment to Malta.

The United States delegation is not able to accept such provisions at this time. However, I wish to assure you that my Government realizes the importance your Government attaches to the increase of investments in Malta. Should circumstances change, including any changes in the manner in which the United States imposes income tax upon the income of United States investments in Malta, our Government would be prepared to reopen the discussions in order to reflect in this Agreement provisions which would minimize the conflicts

between the United States tax system and the incentives proposed by the Government of Malta to foreign investors and which are consistent with the income tax policies of the United States, including treaty policies, with respect to other developing countries.

(2) In the case of profits from the operation of a ship in international waters to which paragraph (5) of Article 8 (Shipping and Air Transport) of the Agreement applies, the said profits shall be deemed to constitute profits to which the provisions of Article 7 (Business Profits) shall apply.

(3) In the case of interest referred to in paragraph (2) of Article 11 of the Agreement and in the case of Royalties referred to in paragraph (2) of Article 12, Malta will bring to charge the income in question at the normal Malta rates as part of the total income of the recipient which is liable to Malta tax for the year in question. In computing the amount of interest and royalties, respectively subject to tax as above, Malta will allow as a deduction any expenses proved to have been incurred in the production of the said income. In applying the limitations set out in the two paragraphs, Malta will restrict its tax on the income so computed (such tax to be determined in an amount arrived at by multiplying the total tax chargeable by a

fraction having the net interest or royalty, respectively, as its numerator and the total income as its denominator), to a maximum of 12 1/2% of the relative gross interest or royalty, as the case may be.

If this is in accordance with your understanding, I would appreciate an acknowledgement from you to that effect.

Accept, Sir, the renewed assurances of my highest consideration.

Joan M. Clark

Joan M. Clark
American Ambassador

Mr. Robert J. Stivala
Secretary
Ministry of Finance, Customs, and
People's Financial Investments
Valletta

Valletta, Malta,
21 March 1980.

Excellency:

I have the honour to refer to your letter of today's date, which reads as follows:

[For the text of the U.S. letter, see pp. 53-55.]

I have the honour to confirm that the contents of your letter are in accordance with my Government's understanding on the matters in question.

R. Stivala,
Secretary,
Ministry of Finance,
Customs and People's
Financial Investments.

GPO: 1985 49-149 (12800)